Con Edison
Law Department
Consolidated Edison Company of New York, Inc.
4 Irving Place, New York, N.Y. 10003

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June 3, 1996

Office of the Secretary
Federal Communications Commission
1919 M. Street, N.W., Room 222
Washington, D.C. 20554

Re: **Implementation of the Local Competition Provisions of the Telecommunications Act of 1996**
Docket No. 96-98

To Whom It May Concern:

Please find enclosed for filing in the above proceeding the original and 12 copies of the Reply Comments of Consolidated Edison Company of New York, Inc.

Also enclosed is a copy of the foregoing document and a self-addressed, stamped envelope. Kindly date stamp this copy and return it to me in the envelope provided. Thank you for your cooperation.

Sincerely,

Mary Krayeske/kcl

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	**CC Docket No. 96-98**

REPLY COMMENTS OF CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Consolidated Edison Company of New York, Inc.
4 Irving Place - Rm 1815S
New York, NY 10003
(212) 460-6330

By: John D. McMahon
Mary L. Krayeske

Its Attorneys

Dated: June 3, 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	FCC Docket No. 96-98

REPLY COMMENTS OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

In response to the questions raised in the Notice of Proposed Rulemaking ("NPRM") issued by the Federal Communications Commission (the "Commission") regarding certain interconnection issues, the Commission received numerous comments. Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company") submits this reply to the comments submitted by other parties in this proceeding.

I. Other Parties' Comments As To The Meaning Of "Nondiscriminatory Access"

The Commission's NPRM requested that parties elaborate on the meaning of the phrase "nondiscriminatory access" to facilities.

Several parties suggest a "first come/first served" standard. Such a standard

could encourage prospective applicants to seek space before it is required, and electric utilities in any event would not provide space that is no longer available. If the Commission adopts a standard like that, it should include a provision clearly stating that the applicant seeking to reserve space on a speculative basis, far into the future, or without specific plans, will not be allowed to leverage such a standard to an unwarranted or improper advantage.

In general, the suggestions for national standards should be rejected. Electric utilities have different reliability and customer service needs to address depending on location. Con Edison's congested urban location makes it very different from other New York State utilities, let alone from utilities in other parts of the nation (the New York Public Service Commission establishes different reliability standards for each utility and for each type of distribution system (network/radial/underground)). Mandating one national standard would not account for these differences.

Another suggestion (Nextlink Communications) is that there should be prescribed contractual terms and conditions for uniform access including insurance, liability and indemnification. Such a provision would require "lowest common denominator" terms and conditions, making well-financed and expertly operated attachment applicants, and applicants seeking technologically and physically simple attachments, to provide the same financial and related legal representations as

applicants with no expertise in the business seeking to make technologically complex attachments. It would also ignore regional differences in litigation practices, size of jury awards, and differences among states in standards for tort liability. Such a uniform prescription would be unworkable.

Finally, several parties commented that the Commission should expand the definition of poles, ducts, conduits, and rights-of-way to include roof rights on utility buildings (Winstar), building entrances and risers (American Communications Services), vaults and building risers (Association for Telecommunications Services), LEC pathways (AT&T, and MCI), and overhead distribution lines (New England Electric Service Companies). These attempts to increase the scope of the facilities covered under the Telecommunications Act (the "Act") should be rejected as contrary to law and congressional intent. Access to facilities other than those covered by the Act raises different issues and should not be addressed in this proceeding.

II. The Parties' Comments Regarding Safety, Reliability and Engineering Reasons Should Not Be Adopted.

The Act permits utilities to deny access to its facilities based on safety, reliability, and engineering reasons. The Commission requested comments regarding the scope of the reasons that should be permitted to deny access for these three purposes. Responding to this request, some parties commented that there should be

national standards established for utilities to deny access (MFS Communications Company, Teleport). As discussed above, national standards are unacceptable as a solution to the problem of defining "nondiscriminatory access," nor are they a solution to determining safety, reliability or engineering issues. Con Edison needs its facilities in order to provide its 3-million customers safe and adequate electric service. For the Commission to prescribe nationally the circumstances in which a proposed attachment would or would not jeopardize either the adequacy of that service or the safety of the employees rendering that service would require the Commission to make a totally unrealistic assumption about the degree of similarity of conditions nationwide, and, even more unrealistic, a prediction about the countless potential cases that will arise that raise the question of safety and reliability. The suggestion should not be pursued.

Other parties commented that utilities should not be permitted to reserve space in their own facilities (GST Telecomm, Inc., American Communications Services, Inc., AT&T, and MCI Telecommunications Corporation). Instituting a theory of this type would place the needs of the telecommunications industry above a utility's mandate to use its facilities to serve its customers, and the Commission should not afford any weight to this theory. The needs of the utility's system must be recognized and the concept that the Telecommunications Act gives rights to access to "available

space" should be remembered. The utility must have the right to maintain whatever spare capacity it determines reasonably necessary to continue to operate its system.

MFS Communications Company, Inc. states that "access may not be refused due to insufficient capacity if it is possible to rearrange the existing facilities using the pathway (consistent with applicable engineering standards) to accommodate the new user." (MFS, p. 10). Electric utilities should not and cannot be required to "free up or create [] capacity" for requesting attachees. The Act requires that utilities provide access where there is existing space available. The Commission should not expand the Act's parameters to mandate that a utility rearrange its facilities to accommodate any request to attach to its system. The costs in engineering studies alone to review the ways that complex distribution systems might be re-arranged to create space for telecommunications could be enormous.

AT&T makes a similarly unrealistic and unfair suggestion when it states (p. 18) that electric utilities can maintain space that will be needed within one year of the attachment. That standard would confound electric utility planning practices and put electric utility reliability and planning practices squarely into the lowest tier of consideration, in effect giving little more than lip service to the concept of electric utility reliability and advance planning. Clearly, electric utilities must be able to plan and construct their systems and not be held to unacceptably brief unrealistic planning horizons for their customers.

III. System Security Concerns Must Be Recognized.

AT&T maintains that the Commission should mandate that, promptly upon request, utilities should provide their "cable plats and conduit prints showing the nature and location of their poles, cables, and conduits" (AT&T, p. 19). AT&T states that these documents are critical for route planning and that disclosure does not give rise to "any legitimate security or privacy concerns" (id.) Although the type of parties to which AT&T is referring -- LEC's and/or utilities -- is unclear, Con Edison vigorously objects to the statement that there would be no security concerns involved with handing over its conduit prints upon the request of any telecommunications provider or that such concerns are overridden by the public need to provide access. Con Edison cannot overemphasize the need to preserve security for its unique system, something that the New York Public Service Commission has recognized is impacted by the release of detailed utility system plans. Con Edison believes that the system security concerns arising from the release of detailed data can and must be balanced in a workable way against access applicants. This balancing will include the provision of non-detailed information, followed by technical discussion and leading up to more detailed presentations, under confidentiality and security provisions where appropriate as a means of satisfying paramount security concerns.

IV. Existing Agreements

The Association for Local Telecommunications Services claims that existing agreements may be reopened under the Commission's new rules. There is nothing in the Act that warrants such extraordinary action and there is no basis or evident need for it. The suggestion is overreaching and should be rejected.

V. Conclusion

The Commission should adopt rules and regulations for pole attachments consistent with Con Edison's initial and reply comments in this proceeding.

Dated: June 3, 1996

Respectfully submitted,

Mary K Krayeske /kal

John D. McMahon
Mary Krayeske

Attorneys for
Consolidated Edison Company
of New York, Inc.
4 Irving Place, Room 1815-S
New York, New York 10003
Telephone: (212) 460-6330